DEVELOPMENT & COMMERCIAL BANK BHD.

v.

GOVERNMENT OF MALAYSIA & ORS.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[ORIGINATING MOTION NO. 25-11-1989]
25 NOVEMBER 1989

LAND LAW: *Registrar's Caveat - Section 320(1)(b)(i) and (ba) of the National Land Code 1965 - Protection of interest of Federation - Chargor's failure to settle income tax - Prior Court Order for sale under s. 256 of the National Land Code 1965 - Remedy of chargee under ss. 321(3)(c) and 418 - Time Limit for appeal under s. 418 - Civil Procedure - Originating motion - Oral application to proceed under s. 417 instead of s. 418 - Agreed costs.*

Plaintiff obtained Court order for sale of piece of land under s. 256 of the National Land Code 1965. The said land was subject to a charge to secure repayment of banking facilities given by the plaintiff to a third party.

Subsequent to the Court order, the Registrar of Land Titles, Kedah, pursuant to s. 320(1)(b)(i) and (ba) of the Code entered a Registrar's caveat on the said land upon the request of the second defendant being a caveat for the protection of the interest of the Federation on account of the chargor's failure to settle income tax.

The plaintiff by way of originating motion applied *inter alia* for an order that the Registrar of Land Titles cancel or remove the said caveat. At the hearing, Counsel for the plaintiff applied to delete the reference to s. 321(3)(c) of the Code intending to proceed with the originating motion under s. 417 and not under s. 418 of the said Code.

Held:

[1] As the Court order was obtained prior to the date on which the Registrar's caveat was entered on the said land, it cannot be gainsaid that the plaintiff was aggrieved at the decision of the Registrar in entering the said caveat.

[2] The remedy open to the plaintiff was to appeal against the said decision of the Registrar, under s. 321(3)(c) read with s. 418 of the Code. However this was not done.

[3] The originating motion being in the nature of an appeal, although not in form or context, was filed well past the period limited for appeal under s. 418 of the Code.

[4] Counsel's oral application to delete the reference to s. 321(3)(c) in the title of the motion and to have the matter considered under s. 417 was inconsequential since there were no other remedy available to the plaintiff. The originating motion could not have been proceeded with under s. 417. The specific instances under which the Registrar's caveat may be cancelled are prescribed under s. 321(3) of the Code and the plaintiff's remedy is s. 321(3) of the Code and the plaintiff's remedy is prescribed under s. 321(3)(c) of the said Code.

[5] The originating motion was dismissed with agreed costs of RM400 to the first and second defendants and RM300 to the third defendant.

[Order accordingly.]

Case referred to:
Land Executive Committee of Federal Territory v. Harper Gilfillan Bhd. [1981] 1 MLJ 234

Legislation referred to:
National Land Code 1965, ss. 256, 320(1)(b)(i), (ba), 321(3), (c), 417, 418

For the plaintiff/applicant - Poh; M/s. Jin-Nge & Co.
For the 1st and 2nd defendants - Balia Yusof; SFC
For the 3rd defendant - Abdul Malik bin Haji Ishak; Kedah State Legal Adviser

JUDGMENT

KC Vohrah J:

On 3 October 1987 Development and Commercial Bank Bhd., the plaintiff company, obtained a Court order for the sale of a piece of land under s. 256 of the National Land Code. The land had been charged by one Tan Hai Teng to the plaintiff company to secure the repayment of banking facilities given by the plaintiff company to a third party.

On 23 August 1988 the Registrar of Land Titles, Kedah, entered a Registrar's caveat on the said land. This was after he had received a letter of request from the Alor Setar office of the Director General of Inland Revenue (the second defendant) to enter a Registrar's caveat on the said land for the protection of the Federation's interest. The reason given in the letter for such a request was that Tan Hai Teng had not settled his income tax with the Government of Malaysia. The Registrar in his affidavit said that he has entered the caveat acting under paras. (b)(i) and (ba) of s. 320(1) of the National Land Code.

Tan Hai Teng, the registered proprietor of the land, as well as the plaintiff company, the chargee of the land, were served with a notice entry of the Registrar's caveat on the said land. In the case of the plaintiff company it was served on 2 December 1988.

The plaintiff company on 28 December 1988 in a letter through their solicitors to the Senior Assistant Director of Inland Revenue Department Kuala Lumpur requested the registrar's caveat to be removed or cancelled but this was to no avail.

On 16 April 1989 the plaintiff company filed this originating motion applying for, *inter alia*, an order that the Registrar of Titles cancel or remove the said Registrar's caveat.

It will be noted that a s. 321(3) spells out the instances under which a Registrar's caveat may be cancelled by the Registrar.

It states:

> A Registrar's caveat shall continue in force until it is cancelled by the Registrar:
>
> a. of his own motion; or
>
> b. on an application in that behalf by the proprietor of the land affected; or
>
> c. pursuant to any order of the Court made on an appeal under s. 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under para. (b).

Although this application by way of originating motion purports to be predicated on s. 321(3)(c) and appears to be an appeal, in form and context it is not an appeal.

There was an application to delete the reference to s. 321(3)(c) of the Code appearing in the title of the motion and Counsel for the plaintiff stated that she intended to proceed under s. 417 of Code as it was not necessary that the application before me should have gone way of appeal under s. 418 of the Code.

With respect to learned Counsel I do not agree with her view that her application could have proceeded under s. 417. Section 321(3) prescribes specific instances under which the Registrar's caveat may be cancelled and the plaintiff company had a remedy open to it as is prescribed by s. 321(3)(c).

Under para. (a) of s. 321(3) the Registrar may cancel the caveat on his own motion.

Under para. (b) the Registrar may cancel the caveat on an application by the proprietor of the land. If the Registrar refuses to cancel the caveat on such an application by the proprietor of the land the proprietor may under para. (c) of s. 321(3) make an appeal under s. 418 of the Code against the Registrar's refusal to cancel the caveat.

If there is a person other than the proprietor who is aggrieved by the Registrar's decision to enter the caveat, that person may, as is provided for under para. (c) of s. 321(3), appeal under s. 418 of the Code.

Here is a case where the plaintiff company, as chargee of a piece of land, had obtained a Court order to sell the land. And the Court order was obtained earlier than the date on which the Registrar's caveat was entered on the said land. When it received notice of the entry of the Registrar's caveat it cannot be gainsaid that it was aggrieved at the decision of the Registrar to enter his caveat. The remedy that was open to the plaintiff company was to appeal against the decision of the Registrar entering the caveat, proceeding under s. 321(3)(c) read with s. 418 of the Code. This was not done.

This originating motion, even assuming if it can be considered as being in the nature of an appeal, was filed well past the period limited for appeal under s. 418 of the Code and clearly was stale at the time it was filed.

I find support for this view in the Federal Court case of *Land Executive Committee of Federal Territory v. Harper Gilfillan Bhd.* [1981] 1 MLJ 234 at 237 where Raja Azlan Shah Ag. LP (as he then was) stated:

> ... Having regard to the special provision for limiting the time within which to enforce the right, the indications are that Parliament has by using plain and unambiguous language intended the right to be exclusive of any mode of enforcing it. The time limit is the foundation of the right given in the section. It is in the highest degree improbable that the period of three months as a limitation would have been inserted if an indefinite period were intended to be given. The period of three months is obviously for the purpose of preventing stale claims. If the contrary is sustainable, then the respondents are allowed to seek to enforce their statutory right by a method other than that prescribed by the Code creating it.

Since there was no other remedy available to the plaintiff company to have the Registrar's caveat cancelled there was no point in allowing Counsel's oral application to delete the reference to s. 321(3)(c) in the title of the motion and to have the matter considered under s. 417 of the Code. Accordingly I dismissed the motion with agreed costs of RM400 to first and second defendants and RM300 to third defendant.

Also found at [1989] 2 CLJ 1205